

To enrich lives through effective and caring service



Stan Wisniewski
Director

Kerry Gottlieb
Chief Deputy

June 8, 2004

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**RESTROOM CLEANING CONTRACT #73927
TERMINATION OF CONTRACT
(FOURTH SUPERVISORIAL DISTRICT)
(3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

Terminate the Beach Restroom Contract (hereinafter the "Cleaning Contract") with Star Building Maintenance, Inc. (Star), 2686 Dawson Avenue, Signal Hill, California, 90755, and instruct the Director of the Department of Beaches and Harbors ("Director") to notify the contractor of the Board action taken.

PURPOSE /JUSTIFICATION OF RECOMMENDED ACTION

The Department recommends that the Board terminate the Cleaning Contract with Star as a result of Star's repeated performance standard deficiencies of the Cleaning Contract and failure to pay its employees in compliance with the County's Living Wage Ordinance.

On March 5, 2002, your Board approved the award of a three-year contract for janitorial services at County-operated beaches to Star. However, for the past two years, Star has failed to consistently maintain the quality and standards required by the Cleaning Contract. As a result, Star has been assessed significant liquidated damages by the Department for deficiencies noted in the performance of the contract.

Further, a compliance audit performed by the Department in March 2004 revealed that Star maintained an unauthorized subcontracting relationship prohibited by Section 3.23.1 of the Cleaning Contract, as well as violated the Los Angeles County Living Wage Ordinance by paying its employees less than the living wage, underpaying applicable overtime and wages earned by the employees based on the California Labor Code, falsifying employee certification documents that represented the employee's acknowledgement of receiving overtime payments, failing to properly utilize "full-time employees" as defined in Section 3.32.9 of the Cleaning Contract and submitting falsified monthly monitoring reports to the Department.

Effective April 21, 2004, the Department initiated the withholding of payment from Star as a result of Star's failure to pay living wages to its employees pursuant to Section 3.32.7.2(a) of the Cleaning Contract. The Department will withhold the underpaid amounts until Star submits proof to the Department that the unpaid living wages have been paid to the affected employees. Moreover, the Department intends to proceed with debarment procedures as authorized by Section 3.32.8 of the Cleaning Contract and will return to your Board with a record of the Contractor Hearing Board hearing and the proposed decision and recommendation pursuant to Section 3.33.10 of the Cleaning Contract and County Code Section 2.202.040.

Implementation of Strategic Plan Goals

Because the quality and integrity of the management of the work performed under the Cleaning Contract directly affects County residents, and because the County values the labor of employees and has determined they should be compensated appropriately, termination of the Cleaning Contract with Star and the withholding of payments are measures consistent with the Strategic Plan Goal of Service Excellence. Termination of the Cleaning Contract will allow the Department to provide quality services and the management of such services that will be both beneficial and responsive to the beach patrons and to employees performing services on behalf of the County.

FISCAL IMPACT/FINANCING

As a result of terminating the Cleaning Contract, the Department will need to hire six additional County employees at a total annual cost of approximately \$238,000 to perform the work that was performed pursuant to the Cleaning Contract. These costs will be largely offset from contract cost savings resulting from contract termination. The additional annual cost of \$39,000 over the annual cost of contracting with Star will be fully absorbed through a reduction in services and supplies.

FACTS AND PROVISIONAL/LEGAL REQUIREMENTS

On April 1, 2002, Star's Cleaning Contract to perform beach restroom cleaning services began. During the 25-month period from April 2002 through April 2004, Star was assessed liquidated damages totaling \$19,500 for 97 individual violations of performance requirements of the Cleaning Contract (e.g., failure to clean a restroom, failure to open/lock a restroom, etc.). During this period, the Department conducted six meetings with Star to discuss these ongoing violations (on June 6, 2002, June 20, 2002, July 9, 2002, January 7, 2003, July 9, 2003 and March 24, 2004). At each meeting, Star repeatedly indicated its intention to improve its performance; however, it has continued to be cited for violating performance requirements.

Additionally, the Cleaning Contract is a Proposition A contract covered under the County's Living Wage Ordinance. The Living Wage Ordinance requires that contractors submit a "Payroll Statement of Compliance" each month along with copies of payroll checks earned by the employees working on a contract. In July 2003, during the Department's review of monthly payroll records submitted by Star for the period May 2002 through June 2003, the Department identified Star's failure to pay approximately \$2,500 in overtime in accordance with the California Labor Code to employees working on the Cleaning Contract. In the Department's July 15, 2003 letter sent to Star, along with individual Payroll Reporting Form Discrepancy Reports (PDFDR), Star was notified of overtime due to employees and demanded that payment be made to employees by July 28, 2003. Star returned the signed PDFDRs, along with payroll stubs and certifications signed by employees documenting that it paid the required overtime.

In December 2003, Star employees approached the Department to report they were not being paid the living wage rate of \$9.46 per hour, but were being paid a lesser rate of \$7.50 per hour. Further, Star employees presented documentation that they were not being paid by Star for services performed under Star's Cleaning Contract, but by another entity, United Building Services (UBS). The payroll documents provided by the employees indicating they were paid \$7.50 per hour by UBS were in conflict with the monthly payroll documents provided by Star to the Department, which indicated that employees were paid by Star at a rate of \$9.46 per hour. In addition, the Star employees indicated that they did not receive, endorse or cash the overtime checks, nor did they sign the certifications indicating they received the overtime checks related to overtime identified in the Department's July 13, 2003 letter.

After discussing the alleged Living Wage Ordinance violations and other allegations that Star was falsifying payroll documents with the Auditor-Controller, it was decided that the Department's audit unit would perform a contract compliance audit of Star. The contract compliance audit covered the period April 1, 2002 through December 31, 2003.

On April 1, 2004, the Department issued an audit report to Star documenting the audit findings that included:

- Star had an unauthorized subcontracting relationship with UBS during the nine-month period January 2003 through September 2003 in violation of Contract Section 3.23.1.
- Star employees were underpaid \$13,334 during the nine-month period January 2003 through September 2003 when they were paid a rate of \$7.50 per hour, \$1.96 per hour less than the Living Wage Ordinance rate of \$9.46 per hour.
- Star submitted false documentation to the Department indicating that it paid the living wage to employees during the nine-month period January 2003 through September 2003.
- Star employees were underpaid an estimated \$9,300 for overtime hours for which they were not paid an overtime rate in accordance with California Labor Code. (This includes the \$2,500 overtime underpayment previously identified by the Department in July 2003.)
- Star submitted falsified documentation that it paid the \$2,500 in overtime identified by the Department in July 2003.
- Star failed to properly utilize "full-time employees" as defined in Section 3.32.9 of the Cleaning Contract.

On April 6, 2004, Star submitted written confirmation of its acceptance of the audit findings.

Effective April 21, 2004, the Department initiated the withholding of payment from Star as a result of Star's failure to pay living wages to its employees pursuant to Section 3.32.7.2(a) of the Cleaning Contract. The Department plans to withhold the underpaid amounts until Star submits verifiable proof to the Department that the unpaid living wages have been paid to the affected employees.

Based on Star's noncompliance with these provisions of the Cleaning Contract, the Department, in consultation with County Counsel, believes that it is in the best interest of the County to terminate the Cleaning Contract with Star and have these services performed by County employees. In addition, the Department, in consultation with County Counsel, has determined that there are sufficient grounds to support a finding of non-responsibility and will seek to have Star debarred.

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CONTRACTING PROCESS

On March 5, 2002, your Board awarded a contract to Star for janitorial services at County-operated beaches. The Contract provides that upon default of the Contractor, the County may procure replacement services from a third party or by County employees upon such terms and in such manner as the County deems appropriate.

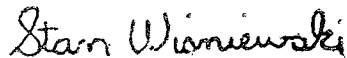
IMPACT ON CURRENT SERVICES

There will be no negative impact on any programs or projects as a result of this action. County employees will undertake the beach restroom services previously performed pursuant to this Cleaning Contract.

CONCLUSION

Instruct the Executive Officer to send two adopted copies of this letter to the Department of Beaches and Harbors.

Respectfully submitted,



Stan Wisniewski, Director

SW:hh

c: Chief Administrative Officer
County Counsel
Executive Officer, Board of Supervisors
Director, Office of Affirmative Action Compliance